

IN THE HIGH COURT OF GUJARAT
AT AHMEDABAD

Date of Decesion 27/02/1996

SPECIAL CIVIL APPLICATION NO. 10874 OF 1995

THE HON'BLE MR.JUSTICE J.N.BHATT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any other order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

PATEL TANSUKHBHAI BACHUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner
MR YM THAKKAR for Respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 27/02/96

ORAL JUDGMENT

Rule. Service of Rule is waived by learned Assistant Government Pleader Shri Y.M.Thakkar for the respondents.

Upon joint request and considering the facts and circumstances and urgency in the matter, this matter is taken up for final hearing today itself.

Deceased father of the petitioner had filled form under sub sec. (1) of section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (the 'Act' for short) and also made an application under section 20 of the Act on 8/2/1978. The competent authority and Deputy Collector prepared final statement under section 9 of the Act on 12/11/1991. The competent authority at Bhavnagar issued notification under section 33 of the Act on 14/4/1993. Notice under sub section (1) of section 10 of the Act came to be served on the deceased father of the petitioner on 29/1/1986. Thereafter, another notice came to be served on the deceased father of the petitioner on 6/1/1995.

The petitioner had filed revision application against the final statement prepared by the respondent authority before respondent no.1 in April, 1992 which came to be dismissed on 11/10/1995. Hence the petition under Articles 226 and 227 of the Constitution of India.

Following points emerged for consideration in this petition :-

- (1) Whether respondent no.2 competent authority could have proceeded further with the finalisation of the form filed by the petitioner under the provisions of the Act, when the application for exemption under section 20 of the Act was pending before respondent no.1 ?
- (2) Whether the proceedings initiated upto the stage of issuance of the notice under section 10(5) of the Act and action on the part of the respondents in taking over possession of the lands of the petitioner only on paper would be legal and valid in the context of the fact that agricultural operations are still going on in the lands in question ?
- (3) Whether respondent no.2 competent authority has committed error in finalising the proceedings, without decision on the application under section

When matter was called out for final hearing today, upon instruction by learned Assistant Government Pleader Mr. Y.M.Thakkar states that it was not disputed that the application under section 20 of the Act submitted by the deceased father of the petitioner on 8/2/1978 is yet not decided, though possession is taken over after following the procedure prescribed under sub section (5) of section 10 of the Act.

Section 20 of the Act reads as under:-

Power to exempt.-(1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter,-

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter:

It can very well be seen from the aforesaid provision that there is a purpose and purports behind it. Power to exempt is exercised under sec. 20 of the Act. In many cases, possession of land is given within the purview of Chapter III of the Act. It is a settled proposition of law that the State or the competent authority cannot take the proceedings beyond the stage of sub-section (2) of section 10 of the Act, if an exemption

application under section 20 is preferred. The very purport and design of making an application under section 20 for exemption will be frustrated, if the competent authority or the State takes the proceedings beyond the stage of Sec. 10(2) of the Act. Therefore, it is incumbent upon the competent authority or the State to stay the proceedings beyond that stage, namely the proceedings beyond section 10(2) of the Act. This proposition is also very much rain-forced by the Division Bench decision of this court rendered in the case of Samarthben Manilal Chokshi and Anr. Vs. State of Gujarat and Anr. reported in 1994(1) G.L.R. 203.

In the light of the facts and circumstances emerging from the record of the case, respondent no.2 competent authority could not have proceeded further with the finalisation of the form filed by the petitioner under the provisions of the Act, when an application for exemption under section 20 of the Act was pending before respondent no.1, State of Gujarat. In the opinion of this court, the respondent authority has committed serious error of law which has been resulted into miscarriage of justice. The petitioner is, therefore, required to be allowed with the direction that respondent no.1 State of Gujarat is directed to decide the application for exemption under section 20 of the Act submitted on 8/2/1978 as early as possible and preferably within a period of ninety days from today in accordance with law, uninfluenced by the fact of final order and statement prepared under Sec.10(3)(5) of the Act. Rule is made absolute to the aforesaid extent, with no order as to costs. Direct service is permitted.
